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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,808	10/23/2003	Udo Gellert	Q77165	6667
23373	7590	06/30/2004	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			VERBITSKY, GAIL KAPLAN	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/691,808	GELLERT, UDO	
	Examiner	Art Unit	
	Gail Verbitsky	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/23/2003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. Claims 2-6, 8 are objected to because of the following informalities: "claim" in line 1 should be replaced with —claim—because only the first letter of the claim can be capitalized.

Claim 4: "the unheated heating filament" in lines 1-2 lacks antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (U.S. 3888110) in view of GB 2079452A [hereinafter GB].

Clark discloses in Fig. 1 a heat conductivity detector comprising a channel wall forming a channel, two electrically conductive carriers 8a and 8b traversing the channel, an electrically heatable filament/ resistance wire/ thermistor 8 which is mounted in a central region of the channel such that a fluid (gas) flows around the filament 8. The filament 8 is held at ends of the two electrically conductive carriers. Clark teaches that the filament (heated/ unheated) 8 is held under tension from at least one carrier 8a and

remains under tension at predetermined (operation) temperatures. The device comprises a block (carrier plate) 2 to support the carriers and a block (cover plate) 1 placed on the carrier plate 2, as shown in Fig. 1.

Clark does not teach that at least one of the carriers is configured such that a minimum distance to the other carrier is larger than in the regions nearer to the channel wall.

GB teaches a device in the filed of applicant's endeavor wherein the distance between wire carriers is larger, in the center of a channel than in the region near to the channel, as shown in Fig. 2.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Clark, so as to have the distance between the carriers in the centre of the channel larger, as taught by GB, because the particular configuration of the carriers, absent any criticality, is only considered to be an obvious modification of the configuration, disclosed by Clark, because the court has held that a change in shape or configuration, without criticality, is within the level of skill in the art as the particular shape claimed by applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide. In re Dailey, 149 USPQ 47 (CCPA 1976).

With respect to the particular configuration of the carriers, i.e., V-shape, as stated in claim 2, the particular configuration, absent any criticality, is only considered to be an obvious modification of the configuration, disclosed by Clark, because the court has held that a change in shape or configuration, without criticality, is within the level of skill

in the art as the particular shape claimed by applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide. In re Dailey, 149 USPQ 47 (CCPA 1976).

With respect to the particular configuration of the carriers, i.e., concave, as stated in claim 7, the particular configuration, absent any criticality, is only considered to be an obvious modification of the configuration, disclosed by Clark, because the court has held that a change in shape or configuration, without criticality, is within the level of skill in the art as the particular shape claimed by applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide. In re Dailey, 149 USPQ 47 (CCPA 1976).

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark and GB as applied to claims 1-4, 6-8 above, and further in view of Ueda (U.S. 6550961)

Clark and GB disclose the device as stated above in paragraph 3.

They do not explicitly teach the limitations of claim 5.

Ueda discloses in Fig. 1 a device in the field of applicant's endeavor wherein a channel is made by a groove in a cover plate (top plate) and in a carrier plate (bottom plate) of a detector cell 1.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the channel, disclosed by Clark and GB, so as to make it as grooves in the cover plate and the carrier plate, as taught by Ueda, in order to simplify the device and minimize the manufacturing costs.

Allowable Subject Matter

5. Claim 9 is allowed.

Information Disclosure Statement

6. The information disclosure statement filed October 23, 2003 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent, in this case, GB1024869 and DE1092698 listed that is not in the English language. It has been placed in the application file, but the information referred to these two references therein has not been considered.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

Gail Verbitsky

Primary Patent Examiner, TC 2800



June 24, 2004